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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,562	01/04/2002	Keith L. Shippy	42390P12915	2307

8791 7590 11/30/2006

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EXAMINER

SHANG, ANNAN Q

ART UNIT PAPER NUMBER

2623

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/040,562

Applicant(s)

SHIPPY ET AL.

Examiner

Annan Q. Shang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4,6-8,11 and 21-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-8,11 and 21-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/16/06 has been entered.

### *Response to Arguments*

2. Applicant's arguments/amendment with respect to claims 1, 4, 6-8, 11 and 21-31 have been considered but are moot in view of the new ground(s) of rejection. The amendment to all the independent claims necessitated the new ground(s) of rejection discussed below.

With respect to claims 1, 4, 6-8, 11 and 21-31 rejected under 35 U.S.C. 102(b) as being anticipated by **Herz et al (6,088,722)**, applicant amends claims, discusses the disclosures the prior art of record and argues that, "...does not disclose updating content protections software..."

In response, Examiner disagrees. Examiner notes applicant's argument, however Herz PPV EPG data software which resides in the STMT is a content protection software since the software is encrypted and is updated when activity falls below a

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predetermined threshold (col.45, line 6-col.47, line 1+). Hence the amended claims do not overcome the prior art of record.

As to the tamper resistant software of claims 4, 6 and 7, applicant defines on page 6, lines 26-29 of disclosure, that tamper resistant software is software that prevents unauthorized access. In view of this Herz software prevents unauthorized access and hence meets the claimed limitation of a tamper resistant software.

With respect to claims 24-27, Examiner notes applicant's arguments, however Herz further discloses using a new cryptographic technique in the updating of the content software (col.45, line 6-col.47, line 1+). Hence applicant's amendments do not overcome the prior art of record as discussed below in the office action. This office action is non-final.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 6-8, 11 and 21-31 are rejected under 35 U.S.C. 102(b) as being anticipated by **Herz et al (6,088,722)**.

As to claims 1 and 4, note the **Herz** reference figures 1-6, discloses a system and method for scheduling broadcast of and access to video programs and other data

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using customer profiles and further discloses a method of updating software on a client device (figs.9-11, Set-top Multimedia Terminal 'STMT' 412) comprising:

Receiving (at Headend 'HE' which includes billing log database, Data Collection 508) billing log data (usage history or programs, movies, etc., watched) from the client device (STMT-412), the billing log data specifying past consumption of pay-per-view (PPV) audio-visual content received by the client device from the server (HE) over a broadcast network (Cable, Satellite, etc., col.9, lines 29-67) during a selected period of time (figs.1-3, col.25, line 42-col.27, line 10, col.38, line 65-col.39, line 66, col.44, lines 20-65 and col.49, lines 27-63); and

Downloading an update for the content protection software resident (PPV EPG data) on the client device from the server, the content protection software, when executing on the client device, for decrypting the PPV audio-visual content and controlling consumption of the PPV audio-visual content, the downloading being performed when the received billing log data indicates consumption of PPV audio-visual content by the client device at less than a predetermined threshold for the selected period of time (col.22, line 64-col.24, line 11, col.25, line 42-col.27, line 10, line 39-col.28, line 46, col.31, line 5-col.32, line 1+, col.41, line 65-col.43, line 65 and col.44, line 20-col.45, line 37), note that HE polls the STMT for number of movies or PPV watched and if the number is less than a predetermined threshold HE updates the EPG or program schedule accordingly based on the time, day, week, etc.

As to claims 6-7, Herz further discloses where the content protect software resident on the client comprises tamper resistant software and where the updated client

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device software comprises a new cryptographic key (col.45, line 6-col.47, line 8 and line 61-col.48, line 36).

As to claims 8 and 11, the claimed "An article comprising: a storage medium having a plurality of machine accessible instructions..." is composed of the same structural elements that were discussed with respect to the rejection of claims 1 and 4.

As to claim 21, the claimed "A server..." is composed of the same structural elements that were discussed with respect to the rejection of claims 1 and 4; the claimed "a client software manager configured to receive billing log data..." is met by System Controller/Distribution System 506/504 of the HE.

Claims 22-23 are met as previously discussed with respect to claims 6-7.

Claims 24-26 are met as previously discussed with respect to claims 6-7.

Claim 27 is met as previously discussed with respect to claims 1 and 4.

Claims 28-30 are met as previously discussed with respect to claims 6-7.

Claim 31 is met as previously discussed with respect to claims 1 and 4.

### ***Conclusion***

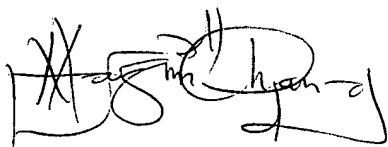
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Annan Q. Shang** whose telephone number is **571-272-7355**. The examiner can normally be reached on **700am-400pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone

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number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC) at 866-217-9197 (toll-free)**. If you would like assistance from a **USPTO Customer Service Representative** or access to the automated information system, call **800-786-9199 (IN USA OR CANADA) or 571-272-1000**.

A handwritten signature in black ink, appearing to read 'Annan Q. Shang', written over a rectangular box.

**Annan Q. Shang**